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91ST CONGRESS }
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SENATE

{ REPORT
No. 91-1106

MRS. MARCELLA COSLOVICH FABRETTO

AUGUST 12 (legislative day, AUGUST 11), 1970.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 13383]

The Committee on the Judiciary, to which was referred the bill (H.R. 13383) for the relief of Mrs. Marcella Coslovich Fabretto, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to enable the mother of a U.S. citizen to file a petition for naturalization based on the periods of time she has resided in the United States since her lawful admission for permanent residence on December 21, 1955.

STATEMENT OF FACTS

The beneficiary of the bill is a 73-year-old widow, a native of Austria and citizen of Italy, who entered the United States for permanent residence on December 21, 1955. She resides with her daughter and son-in-law who are citizens of the United States. The son-in-law is a Foreign Service officer and the beneficiary has accompanied the family on foreign assignments. She has had more than the required 5 years' permanent residence and 2½ years' physical presence in the United States, but not within the 5-year period preceding the filing of a petition for naturalization. The beneficiary desires to be naturalized as a citizen of the United States so that she can travel abroad with her family more easily.

A letter, with attached memorandum, dated October 1, 1969, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., October 1, 1969.

A10325659.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H.R. 13383) for the relief of Mrs. Marcella Coslovich Fabretto, there is attached a memorandum of information concerning the beneficiary.

The bill would provide that the beneficiary has met the residence and physical presence requirements of the Immigration and Nationality Act for naturalization since her admission for permanent residence on December 21, 1955.

Sincerely,

RAYMOND F. FARRELL,
Commissioner.

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND
NATURALIZATION SERVICE FILES RE H.R. 13383

The beneficiary, Marcella Coslovich Fabretto, a native of Austria and citizen of Italy, was born on March 27, 1897. She married Angelo Fabretto, a native and citizen of Italy, on May 1, 1919, in Austria. Four daughters were born to them. The two elder daughters reside in the United States and are naturalized citizens of this country. The other two daughters reside outside the United States. The beneficiary's husband died in 1955 in Italy. She resides in Silver Spring, Md., with Mr. and Mrs. James F. Shea, her son-in-law and daughter, who employ her as a housekeeper. She has been employed as a housekeeper by them since her admission to this country for permanent residence on December 21, 1955. She completed elementary school in Austria in 1910. Her brother and a sister reside in Italy. Two other sisters reside in Yugoslavia.

The beneficiary was admitted to the United States on December 21, 1955, for permanent residence. She remained in this country until January 3, 1957, at which time she accompanied Mr. and Mrs. James F. Shea as a housekeeper to his Foreign Service post in South America. She was readmitted to this country on September 23, 1961. In May 1962, she again departed from the United States with them and remained abroad until June 1964. She accompanied them to South America in October 1964 and did not return from abroad until December 20, 1966. She last departed from the United States on February 3, 1967, and was again readmitted on June 14, 1969, and has remained in this country to date.

Mr. and Mrs. James F. Shea are the interested parties in this case. Mr. Shea is a career officer with the Foreign Service of the Department of State and earns \$18,000 a year from his

employment. They have four children. In his position, he is required to be absent from the United States for long periods of time. The beneficiary, because of her age, is dependent upon them for her livelihood and must accompany them abroad.

The beneficiary desires to become a citizen of the United States in order that she may be able to accompany the interested parties abroad more easily.

Private Bill H.R. 18129, 90th Congress, in behalf of the beneficiary was not enacted.

Congressman Gilbert Gude, the author of the bill, submitted the following letters in support of the bill to the Committee on the Judiciary of the House of Representatives:

HOUSE OF REPRESENTATIVES,
Washington, D.C., July 1, 1970.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
U.S. House of Representatives.

DEAR MR. CHAIRMAN: I am again addressing you with regard to H.R. 13383, which I reintroduced in the 91st Congress for the relief of Mrs. Marcella Coslovich Fabretto.

Mrs. Fabretto, who was born on March 27, 1897, is 73 years of age. She was born in Austria, is a citizen of Italy and is a refugee from Yugoslavia. Her husband passed away about 15 years ago. She was admitted to the United States for permanent residence on December 21, 1955, to join her daughter and son-in-law, Mr. James F. Shea, a Foreign Service officer with the Department of State.

Marcella Coslovich Fabretto is most anxious to become an American citizen. However, because of her advanced age she is 100 percent dependent upon Mr. Shea for her livelihood so it is necessary for her to accompany him wherever he is assigned. In his capacity, Mr. Shea is required to be absent from the United States for extended periods except when he is returned for home leave.

Prior to the original introduction of this legislation, I explored the possibility of an administrative remedy to resolve Mrs. Fabretto's problem. I quote from a letter I received signed by Raymond F. Farrell, Commissioner, Immigration and Naturalization Service, U.S. Department of Justice:

"The statutory provisions relating to continuous residence and physical presence are express, mandatory requirements which are not subject to discretionary waiver by this Service or the naturalization courts. Generally, they cause no difficulty or hardship except under unusual circumstances such as those existing in Mrs. Fabretto's (sic) case."

Under the circumstances and because of her advanced age, I trust your committee will feel sympathetic toward H.R. 13383 in order to permit Mrs. Fabretto to apply for U.S. citizenship notwithstanding the 5-year residence requirement.

Sincerely,

GILBERT GUDE.

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., April 10, 1967.

CO 703.944.

Hon. GILBERT GUDE,
House of Representatives,
Washington, D.C.

DEAR MR. GUDE: Further reference is made to your interest in the case of Mrs. Marcella Coslovich Fabrettio.

The district director of this Service at Baltimore, Md., has confirmed that Mrs. Fabrettio was admitted to the United States for permanent residence on December 21, 1955. She was abroad from January 1957 until September 23, 1961, when she was readmitted into the United States as a returning resident.

To qualify for naturalization under the general provisions of the Immigration and Nationality Act, an applicant must reside continuously in the United States as a lawful permanent resident during the 5 years immediately preceding the date on which the petition for naturalization is filed in court and, during the same 5-year period, she also must be physically present in the United States for an aggregate of at least 2½ years. Under the statute, the requisite continuity of residence for naturalization purposes is broken by a continuous absence of a year or more during the applicable 5-year period.

Accordingly, if Mrs. Fabrettio has been continuously absent for a year or more during the past 5 years, the continuity of her residence for naturalization purposes has been breached, and she is not in a position to qualify for naturalization at this time. Alternatively, assuming no single continuous absence of such duration during the past 5 years, but a succession of absences throughout the period totaling more than 2½ years, she still would be ineligible to proceed at this time because of her inability to meet the physical presence prerequisite. Unfortunately, the available information does not permit a precise evaluation of Mrs. Fabrettio's eligibility in these areas.

The statutory provisions relating to continuous residence and physical presence are express, mandatory requirements which are not subject to discretionary waiver by this Service or the naturalization courts. Generally, they cause no difficulty or hardship except under unusual circumstances such as those existing in Mrs. Fabrettio's case.

Section 213 of the Immigration and Nationality Act provides in part that an applicant for citizenship shall demonstrate that she is able to speak, read, and write simple words in everyday use in the English language. Exceptions from the requirement are provided for a person who is physically unable to speak, read, or write, and for persons who were over 50 years of age on December 24, 1952, and who had been living in the United States for at least 20 years on that date. However, the record fails to establish that Mrs. Fabrettio is eligible for an exemption under this requirement.

Many local school systems provide evening courses to assist the foreign born in learning the English language and help prepare them for naturalization. Mrs. Fabrettio and her daughter may wish to make inquiries through her local school system as to what courses

may be available to her. In addition, she may be interested in the attached form M-132 which outlines home study opportunities available to applicants for naturalization.

With regard to your introducing private legislation on behalf of Mrs. Fabrettio, if a bill were to be introduced and a report requested by the Judiciary Committee, this Service would merely report the facts of the case and, in accordance with the understanding with the committee, would not express its views in favor of or in opposition to such bill.

Sincerely,

RAYMOND F. FARRELL,
Commissioner.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H.R. 13383) should be enacted.

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